

## § 120.1050

### § 120.1050 On-site reviews and examinations.

(a) *On-site reviews.* SBA may conduct on-site reviews of the SBA loan operations of SBA Lenders. The on-site review may include, but is not limited to, an evaluation of the following:

- (1) Portfolio performance;
- (2) SBA operations management;
- (3) Credit administration; and
- (4) Compliance with Loan Program Requirements.

(b) *On-site examinations.* SBA may conduct safety and soundness examinations of SBA Supervised Lenders, except SBA will not conduct safety and soundness examinations of Other Regulated SBLCs under §§ 120.1510 and 1511. The on-site safety and soundness examination may include, but is not limited to, an evaluation of:

- (1) Capital adequacy;
- (2) Asset quality (including credit administration and allowance for loan losses);
- (3) Management quality (including internal controls, loan portfolio management, and asset/liability management);
- (4) Earnings;
- (5) Liquidity; and
- (6) Compliance with Loan Program Requirements.

(c) *On-site reviews/examinations of Intermediaries and NTAPs.* SBA may perform on-site reviews or examinations of Intermediaries and NTAPs.

(d) *Other on-site reviews or examinations.* SBA may perform other on-site reviews/examinations as needed as determined by SBA in its discretion.

[73 FR 75519, Dec. 11, 2008]

### § 120.1051 Frequency of on-site reviews and examinations.

SBA may conduct on-site reviews and examinations of SBA Lenders, Intermediaries, and NTAPs on a periodic basis. SBA may consider, but is not limited to, the following factors in determining frequency:

- (a) Off-site review/monitoring results, including an SBA Lender's, Intermediary's or NTAP's Risk Rating;
- (b) SBA loan portfolio size;
- (c) Previous review or examination findings;

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(d) Responsiveness in correcting deficiencies noted in prior reviews or examinations; and

(e) Such other risk-related information as SBA, in its discretion, determines to be appropriate.

[73 FR 75519, Dec. 11, 2008]

### § 120.1055 Review and examination results.

(a) *Written Reports.* SBA will provide an SBA Lender, Intermediary, and NTAP a copy of SBA's written report prepared as a result of the SBA Lender review or examination ("Report"). The Report may contain findings, conclusions, corrective actions and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender, Intermediary, and NTAP, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) *Response to review and examination Reports.* SBA Lenders, Intermediaries, and NTAPs must respond to Report findings and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender, Intermediary, or NTAP must respond within 30 days from the Report date unless SBA notifies the SBA Lender, Intermediary, or NTAP in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period. The SBA Lender, Intermediary, or NTAP response must address each finding and corrective action. In proposing a corrective action or capital restoration plan, the SBA Lender, Intermediary, or NTAP must detail: The steps it will take to correct the finding(s); the time within which each step will be taken; the timeframe for accomplishing the entire corrective action plan; and the person(s) or department at the SBA Lender, Intermediary, or NTAP charged with carrying out the corrective action or capital restoration plan, as applicable.

(c) *SBA response.* SBA will provide written notice of whether the response

and, if applicable, any corrective action or capital restoration plan, is approved, or whether SBA will seek additional information or require other action.

(d) *Failure to respond or to submit or implement an acceptable plan.* If an SBA Lender, Intermediary, or NTAP fails to respond in writing to SBA, respond timely to SBA, or provide a response acceptable to SBA within SBA's discretion, or respond to all findings and required corrective actions in a Report, then SBA may take enforcement action under Subpart I. If an SBA Lender, Intermediary, or NTAP that is requested to submit a corrective action plan or capital restoration plan to SBA fails to do so in writing; fails to submit timely such plan to SBA; or fails to submit a plan acceptable to SBA within SBA's discretion, then SBA may take enforcement action under § 120.1500 through § 120.1540. If an SBA Lender, Intermediary, or NTAP fails to implement in any material respect a corrective action or capital restoration plan within the required timeframe, then SBA may undertake enforcement action under § 120.1500 through § 120.1540.

[73 FR 75519, Dec. 11, 2008]

**§ 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.**

(a) *In general.* Reports and other SBA prepared review or examination related documents are the property of SBA and are loaned to an SBA Lender, Intermediary, or NTAP for its confidential use only. The Reports, Risk Ratings, and related Confidential Information are privileged and confidential as more fully explained in paragraph (b) of this section. The Report, Risk Rating, and Confidential Information must not be relied upon for any purpose other than SBA's Lender oversight and SBA's portfolio management purposes. An SBA Lender, Intermediary, or NTAP must not make any representations concerning the Report (including its findings, conclusions, and recommendations), the Risk Rating, or the Confidential Information. For purposes of this regulation, Report means the review or examination report and related documents. For purposes of this

regulation, Confidential Information is defined in the SBA Lender information portal and by notice issued from time to time. Access to the Lender information portal may be obtained by contacting the OCRM.

(b) *Disclosure prohibition.* Each SBA Lender, Intermediary, and NTAP is prohibited from disclosing its Report, Risk Rating, and Confidential Information, in full or in part, in any manner, without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting them in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (for purposes of this regulation, each referred to as a "permitted party"), and to those for whom SBA has approved access by prior written consent, and to those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing so that SBA and the Information Provider have, within their discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, "Information Provider" means any contractor that provides SBA with the Risk Rating. Each SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the Report, Risk Rating, or Confidential Information other than